

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DD2040

Title: Meridian Water Station Improvements (at Meridian Water)

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

The information below is not for publication until the stated date, because:

This information in this part 2 paper is not for publication as it relates to details of the project specific agreements (including the second phase agreement) between Network Rail and LB Enfield. The release of this information could prejudice:

- Network Rail's and LB Enfield's ability to work with possible funders, contractors and other organisations generally in negotiating terms of agreements in relation to the project which impacts upon costs and GLA's ability to deliver within budget and is therefore considered to be commercially sensitive; and
- LB Enfield's commercial position in negotiating with Network Rail on the final cost of the contract in May/June 2017 (e.g. information around the total funding package the borough are securing (£40m)).

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed: 31 May 2019 (once the project delivery is complete)

Legal recommendation on the grounds of keeping the information confidential:

In the event of any request for access to the information contained in this document under section 1 of the Freedom of Information Act 2000 ("the Act"), it is considered that access can be denied on the basis that the disclosure of such information would prejudice the GLA's and the proposed borrower's commercial interests and therefore, is covered by the exemption under section 43 of the Act.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information. Section 43 of the Act provides that information is exempt information if its disclosure under the Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it). The paragraph above states that the information is considered commercially sensitive as its release could detrimentally affect the ability of: Network Rail and LB Enfield to work with possible funders, contractors and other organisations generally in negotiating terms of agreements in relation to the project which impacts upon costs; and LB Enfield to negotiate optimally with Network Rail on the final

cost of the contract in May/June 2017.

The section 43 exemption is a qualified exemption and its use is therefore, subject to a public interest assessment.

Public Interest Assessment

At present, on balance, it is considered that the public interest is best served if the information is not disclosed at this point. Disclosure by the GLA would be likely to have a detrimental effect on the GLA's and the proposed recipients' commercial interests and value for money delivery of the proposed project which promote economic development and wealth creation in Greater London.

The eligibility of the exemption should be reassessed in the event of an FOI request for this information as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

Legal Adviser - I make the above recommendations that this information should be considered confidential at this time

Name **Stephen Fernandes-Owen, TfL Legal** **Date** **9 November 2016**

Once this form is fully authorised, this should be circulated with the Part 1 form.

Confidential decision and/or advice:

TOTAL FUNDING PACKAGE THE BOROUGH ARE SECURING

1. In recent months (since September 2015) LB Enfield have been working with NR to evolve the form and function of the station within an enhanced design (**target budget of £40 million**).
2. If a full funding package is not secured for the Meridian Water station project (budget of £40 million) by the end of February 2017 then LB Enfield will seek to de-scope the project between March and May 2017 with Network Rail.
3. An early estimated cost of the station concept design was completed in March 2016 which indicated the total cost of the station upgrade may be up to £45.9 million (including contingency). This comprises off-network deliverables (£33.9 million) and on-network deliverables (£12 million). The Borough, however, is working with NR to seek to achieve a lower build cost and has a target budget of £40 million. NR will manage the work, which will be undertaken by VolkerFitzpatrick construction.
4. The full funding package is indicated below.

Meridian Water Station Funding Package	2015/16	2016/17	2017/18	2018/19	TOTAL
Meridian Water station - Growing Places Fund (Repayable Funding)			2,500,000		2,500,000

STAR - Growing Places Fund (Grant)			6,900,000		6,900,000
Housing Zone (Grant)		6,000,000			6,000,000
Housing Zone (Recoverable Grant)			2,820,000	2,280,000	5,100,000
LB Enfield Forward Fund (from developer)		2,104,000	2,896,000	5,000,000	10,000,000
LB Enfield capital	1,000,000	2,000,000	850,000	2,850,000	6,700,000
CIL (subject to approval and availability)			2,800,000		2,800,000
Total	1,000,000	10,104,000	18,766,000	10,130,000	40,000,000

Note, £39.4 million of the funding package is allocated to the Network Rail cash profile of spend and £0.6 million of the funding package is allocated to LB Enfield professional fees.

By the end of November 2016 the GLA GPF investment (£2.5 million) will be secured; by the end of February 2017 the GLA Housing Zones investments (£6 million and £5.1 million) will be secured; whilst the £6.9 million GLA GPF investment, as approved under the STAR project, already has Mayoral Decision approval and is captured within the Memorandum of Understanding that the GLA have in place with TfL.

The developer contribution (£10 million from Barrett's) will be secured in December 2016 at the point of contract closure between the borough and Barrett's. And LB Enfield is seeking Cabinet approval for the boroughs contributions in early - mid 2017 once Network Rail present full estimate for the final cost.

5. To help mitigate cost overrun risks and the full funding package not being secured in time for the second phase contract, LB Enfield is seeking Cabinet approval in early-mid 2017 for an open ended cost plan, and to bear the cost risk on the project (excluding GLA investments). Once this has been obtained the risk of the project not being funded is significantly reduced.

PREPARATION FOR SECOND PHASE

6. On or before 31 January 2017 Network Rail shall deliver to LB Enfield:
 - a) a written estimate of the total projected cost of the first and second phases of the Project. LB Enfield acknowledges that this estimate is to be provided for initial guidance and will be subject to Network Rail's internal governance prior to its finalisation; and
 - b) an estimate of the date on which Meridian Water Station is to be entered into service (and thus able to operate as a functional railway station).
 - c) a copy of the programme for the project.
7. On or before the second phase contract Preparation Date (31 May 2017), Network Rail shall deliver to LB Enfield:
 - d) a written estimate of the Estimated Total Project Cost which will form the basis for the negotiations for the second phase contract between the two parties; and
 - e) the date on which Meridian Water Station is to be entered into service (and thus able to operate as a functional railway station); and
 - f) a draft proposal for an agreement between Network Rail and LB Enfield (or a variation to this Agreement) providing for the commissioning and delivery of second phase (the second phase Agreement).
8. The Estimated Total Project Cost shall:
 - g) exclude value added tax;

- h) identify any component which is included as contingency (which amount should not normally exceed 25% of the Estimated Total Project Cost up to GRIP 8);
 - i) be clearly apportioned between costs related to the then remaining elements of the first phase and the scope of the second phase;
 - j) clearly specify which elements of the total projected cost have already been incurred and/or committed to a third party supplier and which are future costs;
 - k) indicate clearly the assumptions made as to price inflation; and
 - l) comprise the total estimated cost of the Project (including for the avoidance of doubt cost incurred under the development services agreement and other agreements and including any costs met or to be met by third parties);
 - m) be itemised to a degree which allows the LB Enfield to identify key cost contributors to the Estimated Total Project Cost and to express its view (acting reasonably) on any proposals for value engineering.
9. Network Rail shall act prudently and with reasonable skill and care in the preparation of the estimates and shall provide LB Enfield with responses to all reasonable enquiries raised by the Council for the purpose of reviewing the specification of Meridian Water Station and clarifying items of cost.
10. LB Enfield and the GLA acknowledge that the Estimated Total Project Cost shall constitute Confidential Information.
11. As soon as reasonably practicable following 31 January 2017, Network Rail and LB Enfield shall arrange for their Representatives to meet to discuss and agree (in principle and subject to their respective legal and governance procedures) the terms of the second phase Agreement. Each party shall use its best endeavours to complete the negotiation of the terms of the second phase Agreement as expediently as possible following the second phase Preparation Date (31 May 2017).
12. The Parties (Network Rail and LB Enfield) have agreed that the following principles should apply to the negotiation of the second phase Agreement:
- n) both Parties wish for the Meridian Water Station to be constructed and each Party should use its best endeavours to identify and agree a solution which results in that construction proceeding;
 - o) the total cost of the Project (including for the avoidance of doubt cost incurred under the development services agreement and other agreements and including any costs met or to be met by third parties) is intended to be approximately £40,000,000 excluding value added tax.
 - p) Meridian Water Station is intended to be completed and to be brought into service at some point between the May-December 2019 timetable change;
 - q) the Parties should examine options for value engineering and scope reduction which are consistent with the above principles;
 - r) the negotiation is to be conducted in an open, collaborative manner, with both Parties acting reasonably and in good faith; and
 - s) the Representatives should remain in regular contact throughout the negotiation.
13. Note, that in reality the value engineering will commence January through to May 2017. And that the 31st July 2017 is the drop dead for contract for the second phase. If by 1 August 2017 the negotiation has not been successfully concluded for the delivery of an operational station at Meridian Water, then the GLA intend to clawback their GPF £2.5 million funding. This drop dead date for the second phase contract will be captured in the GLA – LB Enfield funding agreement. It is intended that the GLA Housing team will have a similar clawback provision in their funding agreement with the borough for the investment they are making into the station. And the STAR project has a similar provision through the TfL-Network Rail contract in that the £6.9m contribution cannot be provided to Network Rail until the second phase contract is signed. An option in this situation would be for the GLA to go into a contract directly with Network Rail to ensure that an operational station of minimum scope is delivered at Meridian Water to safeguard against the outputs of this funding (and the funding being provided through the GPF STAR project).